

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON MCLEAN and
BRIAN COLEMAN,

Plaintiffs,

v.

COMMUNICATIONS CONSTRUCTION
GROUP, LLC,

Defendant.

CIVIL ACTION NO. 06-617 (SLR)

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
COMMUNICATIONS CONSTRUCTION GROUP, LLC'S
MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

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Dated: November 28, 2007

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I. NATURE AND STAGE OF THE PROCEEDING

On October 3, 2006, Plaintiff Jason McLean ("Mr. McLean") and Plaintiff Brian Coleman ("Mr. Coleman") (collectively "Plaintiffs") filed the instant Complaint against Defendants Communications Construction Group, LLC ("CCG"), Brad Dodson, Jonathan Gates, and Mike Fender (the "Individual Defendants"), asserting racial harassment and discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII") ("Count I"), retaliation in violation of Title VII ("Count II"), as well as an Equal Protection Clause claim ("Count III"), a breach implied covenant of good faith and fair dealing claim ("Count IV"), and an assault and battery claim ("Count V"). On October 24, 2006, Defendants filed a motion for partial dismissal to dismiss Counts III-V of the Complaint as well as all claims against the Individual Defendants. On January 30, 2007, the parties filed a joint stipulation for dismissal with regards to Defendants motion which the Court granted on February 1, 2007. Therefore, all that remains in this action is a racial harassment and discrimination claim, Count I, and a retaliation claim, Count II, against CCG. Discovery is closed. CCG now moves for summary judgment because there are no genuine issues of material fact and CCG is entitled to judgment as a matter of law.

II. SUMMARY OF ARGUMENT

1. In this matter, Plaintiffs assert three Title VII claims against CCG for discrimination, harassment, and retaliation. This Court should grant summary judgment with respect to all three of Plaintiffs' claims.

2. Plaintiffs' discrimination claim cannot survive summary judgment because Plaintiffs cannot establish a *prima facie* case of discrimination under Title VII and cannot establish that CCG's legitimate non-discriminatory reasons for its actions are pretextual.

Specifically, Plaintiffs cannot show that their transfer and lay off occurred under circumstances giving rise to an inference of racial discrimination.

3. Plaintiffs' harassment claim cannot survive summary judgment because Plaintiffs cannot establish a prima facie case of racial harassment under Title VII. Specifically, Plaintiffs cannot show that they were subject to harassment that was "pervasive and regular." They heard second hand only one alleged comment.

4. Plaintiffs' retaliation claim cannot survive summary judgment because Plaintiffs cannot establish a prima facie case of retaliation under Title VII and cannot establish that CCG's legitimate non-discriminatory reasons for its actions are pretextual. Specifically, Plaintiffs cannot establish a causal connection between their protected activity and any adverse employment action and they cannot show that their transfer and termination occurred under circumstances giving rise to an inference of discrimination.

5. Therefore, as explained in more detail below, Plaintiffs' claims are entirely without merit and Defendant is entitled to summary judgment.

III. STATEMENT OF UNDISPUTED FACTS¹

A. CCG's Operations

CCG is a construction services company that provides services to the cable television and telephone industries. As CCG contracts with different cable and telephone providers to perform work at many different locations, CCG employees generally work at multiple job sites.

(Complaint/Answer ¶2; Exhibit 1 [Koch Dep.] at 31:11-13). Once CCG employees complete the work at one job site, it is typical for them to relocate to the next job site. (Exhibit 1 [Koch Dep.]

¹ CCG accepts the following recitation of facts as undisputed for the purposes of this Motion only. CCG reserves the right to dispute any or all of the facts presented here at trial, should this Motion be denied.

at 31:14-22). Mr. Coleman himself admitted that CCG is a traveling company:

A: I mean it was a traveling company. That's what the company did. They had job sites all across the United States. Wherever they want to send you, that's where you have to go, if you want the job.

Q: And that's in the nature of the contracts and work that they do?

A: Yeah.

(Exhibit 2 [Coleman Dep.] at 8:21-9:3).

In May 2005, CCG was performing work for Verizon in New Castle, Delaware which consisted of the installation of underground lines in residential neighborhoods. (Exhibit 3 [McLean Dep.] at 36:11-14). At that time, both Plaintiffs Coleman and McLean worked for CCG at the New Castle, Delaware site. Mr. McLean and Mr. Coleman worked on a crew with Brad Dodson, who was the crew foreman. Plaintiffs' crew reported to Mike Fender ("Mr. Fender"), who had the job title field supervisor. (D.I. 3 ¶3; Exhibit 4 [Dodson Dep.] at 24:1-6). Mr. Fender reported to Dave Dodson, who worked as the job supervisor for the New Castle Delaware jobsite. (Exhibit 4 [Dodson Dep.] at 23:17-24:2). Jonathan Gates was the regional supervisor. (D.I. 3 ¶5; Exhibit 3 [McLean Dep.] at 44:3-7).

B. The Alleged Racial Statement

On May 31, 2005, Mr. McLean and Mr. Coleman were working for CCG out of its New Castle, Delaware site. The work consisted of digging holes to put in underground vaults and running for conduit lines between the vaults. (D.I. 1 ¶¶10 and 11; Exhibit 3 [McLean Dep.] at 11:20-23). Another CCG employee, Robert Koch ("Mr. Koch"), began a conversation with Plaintiffs about making money. (Exhibit 3 [McLean Dep.] at 10:6-14; Exhibit 2 [Coleman Dep.] at 11:11-17). At that time, Mr. Koch told Plaintiffs that during the prior week, he heard Brad

Dodson make a comment allegedly referring to Mr. McLean and Mr. Coleman as “niggers.”² (D.I. 3 ¶14; Exhibit 3 [McLean Dep.] at 10: 8-19; Exhibit 2 [Coleman Dep.] at 11:14-23; Exhibit 1 [Koch Dep.] at 10:18-11:22, 13:2-7). Joseph Tatsch (“Mr. Tatsch”), another CCG employee, was walking by Brad Dodson and Mr. Koch and he also heard Brad Dodson make the remark. (Exhibit 1 [Koch Dep.] at 10:23-11:22, Exhibit 5 [Tatsch Dep.] at 14:19-15:14). It is undisputed that Mr. McLean and Mr. Coleman were not present during this conversation and neither Plaintiff actually heard Brad Dodson make the alleged statement. (Exhibit 3 [McLean Dep.] at 13:17-19; Exhibit 2 [Coleman Dep.] at 11:24-12:3, 17:1-14). Rather, Mr. McLean and Mr. Coleman only heard the statement second hand from Mr. Koch who repeated it to them.

After Mr. Koch told Plaintiffs about the racial slur, Mr. McLean and Mr. Coleman left the spot where they were working and went to confront Brad Dodson. (Exhibit 3 [McLean Dep.] at 10:8-11:5). Brad Dodson, at that time, was working around the corner from where Plaintiffs were located and was drilling underneath the street. (Exhibit 3 [McLean Dep.] at 10:20-11:2). Mr. Coleman and Brad Dodson got into a verbal altercation and Brad Dodson apparently poked Mr. Coleman in the chest. (D.I. 3 ¶16; Exhibit 3 [McLean Dep.] at 10:23-11:5; Exhibit 2 [Coleman Dep.] at 23:1-24:2). Only at that time, did Mr. McLean call Lisa Clements (“Ms. Clements”), CCG’s Human Resources Manager and Mr. Coleman called the police. (Exhibit 3 [McLean Dep.] at 11:6-13). Brad Dodson called Dave Dodson to report the incident and Dave Dodson called Mr. Fender and told him to get to the jobsite. (Exhibit 4 [Dodson Dep.] at 23:10-13, 24:7-12). Mr. Fender arrived at the scene and tried to defuse the situation. The police also arrived and took statements from everyone involved.

² Although he denied making the statement during CCG’s contemporaneous internal investigation, CCG will assume that Brad Dodson did make this remark for the purposes of this motion only.

It is undisputed that aside from the May 31, 2005, neither Mr. McLean nor Mr. Coleman has identified any other instances of racial slurs made by CCG employees. (Exhibit 3 [McLean Dep.] at 10:2-5; Exhibit 2 [Coleman Dep.] at 11:1-10). Moreover, both Mr. McLean and Mr. Coleman were promoted to foreman after the incident on May 31, 2005 and after their complaints about the discriminatory statement. (Exhibit 3 [McLean Dep.] at 9:8-13, 31:22-32:1; Exhibit 2 [Coleman Dep.] at 9:4-23).

C. The Investigation

Ms. Clements, on behalf of CCG, investigated the incident. In conducting her investigation, Ms. Clements interviewed all of the individuals involved. (Exhibit 6 [Clements Dep.] at 23:22-24:1). Brad Dodson denied making the racial statement. (Exhibit 6 [Clements Dep.] at 33:33:11-20). As a result of Ms. Clements' investigation, Ms. Clements gave written warnings to Brad Dodson, Mr. Koch, Mr. McLean and Mr. Coleman. Brad Dodson received a written warning for engaging in the physical altercation. (Exhibit 7 [D0491]). Mr. Koch was written up for failing to report the alleged racial statement as required by company policy and for inciting other employees by repeating the statement. (Exhibit 8 [D0486]). Mr. McLean and Mr. Coleman each received a warning for failing to use CCG's Complaint Procedure as stated in the Harassment Policy and for leaving their work area to engage in a physical confrontation with Mr. Dodson. (Exhibit 9 [D0476]; Exhibit 10 [D0481]). Both Mr. McLean and Mr. Coleman had received CCG's Employee Manual and had signed verifications that they had read and understood all of CCG's policies prior to the incident. (Exhibit 3 [McLean Dep.] at 14:2-23; Exhibits 11 [D0018] and Exhibit 12 [D0504]). Plaintiffs were immediately removed from Brad Dodson's crew and did not work on the same crew as him for the remainder of their employment with CCG.

D. The Transfer to Philadelphia

On July 6, 2005 – more than a month after the confrontation incident – Mr. McLean and Mr. Coleman were transferred to a job site in West Chester, Pennsylvania. The reason for the transfer was that the work for Verizon in New Castle was being cut and more work was available in West Chester for another Verizon contract. (Exhibit 13 [Clements Decl.] at ¶ 2). Mr. McLean and Mr. Coleman were not the only CCG employees transferred to the West Chester site. (Exhibit 3 [McLean Dep.] at 37:22-38:5). Their entire crew, including foreman Harry Ortiz (Hispanic), was also transferred to West Chester along with a 120 man Sub Crew. (Exhibit 13 [Clements Decl.] at ¶ 2).

E. Use of the Company Truck

For the West Chester job, Mr. Coleman was assigned the use of a company truck for taking equipment from the warehouse to the job site. Unbeknownst to their new General Foreman – Bill Grover – Mr. Coleman drove the company truck home to Delaware. One morning while driving up the highway to work Mr. Grover saw Mr. Coleman and Mr. McLean driving to work in the company truck. Mr. Grover reviewed the issue with Mr. Gates who confirmed that only specifically approved supervisory personnel were authorized to take company vehicles home. (Exhibit 14 [Gates Decl.] at ¶ 3-4). Any foremen who were permitted to take company vehicles home had been grandfathered in under an old policy, which did not apply to Plaintiffs. (*Id.* At ¶ 5-6). Mr. Coleman was directed to stop taking the company truck home. *Id.* He continued to use it at work and to take Mr. McLean to the job site from the warehouse where they reported each morning. *Id.*

F. Lay Off Due to Lack of Work

Mr. McLean and Mr. Coleman were eventually laid off due to lack of work. This

occurred on October 6, 2005, more than four months after the incident with Dave Dodson. However, Plaintiffs were not the only CCG employees in their work group laid off due to lack of work. (Exhibit 3 [McLean Dep.] at 38:10-19). In fact, Plaintiffs were among seven employees who were all laid off on October 6, 2005 due to lack of work. (Exhibit 15 [D0574-D580]; Exhibit 13 [Clements Decl.] at ¶ 3). Four out of the seven laid off employees were outside of Plaintiffs protected class. (Exhibit 13 [Clements Decl.] at ¶ 3).

IV. ARGUMENT

A. Standard Of Review

Rule 56 of the Federal Rules of Civil Procedure mandates the entry of judgment against a party who fails to offer admissible evidence sufficient to establish the existence of every element essential to that party's case and on which that party bears the burden of proof. See Celotex Corp. v. Catrett, 477 U.S. 317, 322, 327 (1986). Although a defendant bears the initial responsibility of asserting the basis for its motion, the defendant is not required to negate the plaintiff's claim. Rather, the defendant must only point out that there is an absence of evidence to support the plaintiff's case or, alternatively, offer affirmative evidence which demonstrates that the plaintiff cannot prove his case. Lawrence v. Nat'l Westminster Bank N.J., 98 F.3d 61, 69 (3d Cir. 1996).

After the defendant demonstrates a lack of evidence to support the non-moving party's claims, the plaintiff must present competent evidence designating "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324 (citation omitted). Although the court is to view all evidence in a light favorable to the plaintiff, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

Rather, a dispute must exist over a material fact. Id.; Charlton v. Paramus Bd. Of Educ., 25 F.3d 194, 197 (3d Cir. 1994). To survive a motion for summary judgment, therefore, the non-moving party must come forward with specific, admissible and credible evidence supporting each element essential to that party's case; mere conclusory allegations or denials are not enough. Schoch v. First Fid. Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990). Applying this standard, the undisputed facts establish that Plaintiffs' claims fail as a matter of law.

B. The Court Should Grant CCG Summary Judgment With Respect to Plaintiffs' Racial Discrimination Claim

Plaintiffs claim that they were subject to discrimination because of their race (African-American). Specifically, Plaintiffs allege that CCG discriminated against them on the basis of their race by transferring their employment, limiting their use of a company truck, and eventually terminating their employment. The Court should grant CCG summary judgment with respect to Plaintiffs' racial discrimination claim because there is absolutely no evidence of racial discrimination in this matter.

1. Plaintiffs Cannot Establish A Prima Facie Case of Racial Discrimination

Plaintiffs' Title VII race discrimination claims are subject to the familiar burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this framework, "[a] plaintiff must first produce evidence sufficient to convince a reasonable factfinder as to all of the elements of a prima facie case of discrimination." Kautz v. Met-Pro Corp., 412 F.3d 463, 465 (3d Cir. 2005) (granting summary judgment). A plaintiff must first establish a prima facie case by showing by a preponderance of evidence that: (1) he belongs to a protected class; (2) he was qualified for the position; (3) he was subject to an adverse employment action; and (4) employees outside of the protected class were treated more

favorably or the circumstances of the adverse employment action otherwise give rise to an inference of unlawful discrimination. See Smith v. Univ. of Pa., No. CIV.A.05-525, 2006 WL 2645143, *7 (E.D. Pa. Sept. 15, 2006) (citing Goosby v. Johnson & Johnson Med., Inc., 228 F.3d 313, 318-19 (3d Cir. 2000)).

Plaintiffs cannot establish a prima facie case of racial discrimination under the fourth prong of the prima facie case because they cannot show that their transfer and termination occurred under circumstances giving rise to an inference of discrimination. Plaintiffs have provided absolutely no evidence of racial animus by CCG. John Gates, Regional Manager, made the decision to transfer Plaintiffs. Plaintiffs have adduced no evidence he acted with any racial motivation whatsoever. Moreover, the fact that both Plaintiffs were promoted to foreman after the May 31, 2005 incident directly refutes their discrimination claim (Exhibit 3 [McLean Dep.] at 9:8-13, 31:22-32:1; Exhibit 2 [Coleman Dep.] at 9:4-23). Additionally, CCG treated Plaintiffs' transfer and termination in the same manner as other similarly situated non-African American employees. For example, Harry Ortiz (Hispanic), who worked on Mr. McLean and Mr. Coleman's crew, was also transferred and then laid off due to lack of work at the same time as Plaintiffs. (Exhibit 13 [Clements Decl.] at ¶ 2). Plaintiffs' only evidence of any racial issue was the statement attributed to foreman Brad Dodson. As Dodson was not involved in any subsequent part of their employment, this is in no way evidence of race discrimination. Accordingly, Plaintiffs cannot establish a prima facie case of race discrimination and their claim fails under Title VII.

2. Plaintiffs Cannot Establish that CCG's Stated Reasons for its Decisions are Pretextual

Assuming Plaintiffs can meet their prima facie burden (which they cannot), the Court should grant summary judgment for CCG because Plaintiffs cannot prove that CCG's stated

reasons for its decisions are pretextual. If a plaintiff satisfies this prima facie burden, the employer must then meet its “relatively light burden” of providing a legitimate, nondiscriminatory reason for its employment action. See Valenti v. Brownlee, No. 04-5369, 2005 WL 1655887, at *3 (E.D. Pa. July 13, 2005) (granting summary judgment) (quoting Fuentes v. Perskie, 32 F.3d 759, 804 (3d Cir. 1994)). At this stage, a defendant has no duty to prove that its “proffered reasons actually motivated [its] employment decision.” Kautz, 412 F.3d at 465. Rather, it simply must articulate and support the existence of those legitimate reasons. See id.; Fuentes, 32 F.3d at 763. Significantly, a defendant need not prove that its stated reason was a good reason, wise reason, fair reason, or even justifiable reason. See Ezold v. Wolf Block, Schorr and Solis-Cohen, 983 F.2d 509, 527 (3d Cir. 1992) (“While an employer’s judgment or course of action may seem poor or erroneous to outsiders, the relevant question is simply whether the given reason was a pretext for illegal discrimination.”) (citation omitted); Storti v. First Fid. Bank, No. CIV.A.97-5283, 1998 WL 404814, at *8 (E.D. Pa. July 16, 1998) (observing that a court does not sit as a “super human resources office” when reviewing management decisions) (citations omitted). Once a defendant meets its minimal burden of production, the burden shifts back to a plaintiff to meet his or her final burden to demonstrate that the defendant’s stated reason was mere pretext for discrimination. A plaintiff faces a “difficult burden” if he is to avoid summary judgment. Kautz, 412 F.3d at 467 (quoting Fuentes, 32 F.3d at 765).

Even assuming *arguendo*, that Plaintiffs can establish a prima facie case, there is no evidence that CCG’s legitimate, non-discriminatory reasons for their decisions are pretextual or that CCG was otherwise motivated by anti-African American animus. Plaintiffs cannot create a triable issue of pretext merely by showing that the “employer’s decision was wrong or mistaken,

since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent.” Fuentes, 32 F.3d at 765. Rather, Plaintiffs must adduce admissible evidence demonstrating such “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable fact finder could rationally find them ‘unworthy of credence.’” Id. In this case, there is not a shred of evidence that CCG’s stated reasons for their decisions are pretextual.

Here, Plaintiffs were transferred from New Castle to West Chester for a legitimate, non-discriminatory reason – because the work Plaintiffs were performing for Verizon in New Castle was ending and more work was available in West Chester on another Verizon contract. (Exhibit 13 [Clements Decl.] at ¶ 2). There is absolutely no evidence that this transfer was somehow motivated by anti-African American animus – only Plaintiffs’ bold-faced assertion. Moreover, as Mr. Coleman himself admitted, it was the nature of the work at CCG that employees would be transferred from one job site to another. (Exhibit 2 [Coleman Dep.] at 8:13-9:3).

While it is true that Plaintiffs were told that they could not drive the company truck home, while other supervisory employees could, this was because only specifically approved supervisory personnel were authorized to take company vehicles home. (Exhibit 14 [Gates Decl.] at ¶ 3-4). Foremen who were permitted to take company vehicles home had been grandfathered in under an old policy. (Id. At ¶ 5-6).

There is also no evidence that Plaintiffs’ eventual layoff for lack of work was somehow motivated because of their race. Plaintiffs were not the only CCG employees laid off due to lack of work. (Exhibit 3 [McLean Dep.] at 38:10-19). In fact, Plaintiffs were among seven employees who were all laid off on October 6, 2005 due to lack of work. (Exhibit 15 [D0574-

D780]; Exhibit 13 [Clements Decl.] at ¶ 3). Four out of the seven employees were outside of Plaintiffs protected class. (Exhibit 13 [Clements Decl.] at ¶ 3). Plaintiffs may subjectively believe that their transfer to West Chester, inability to drive the company truck home, and subsequent termination were wrong or unfair, but that is irrelevant in a discrimination case and legally insufficient to defeat CCG's motion for summary judgment. There is simply no evidence that any of these actions were for anything other than legitimate non-discriminatory reasons.

C. The Court Should Grant CCG Summary Judgment With Respect to Plaintiffs' Racial Harassment Claim

Plaintiffs also claim that they were subject to racial harassment. The crux of Plaintiffs' claim is that Brad Dodson, the foreman of Plaintiffs' crew, referred to Plaintiffs on one occasion as "niggers." Plaintiffs did not hear Brad Dodson make this alleged racial slur, but were told of it by another coworker. The Court should grant CCG summary judgment with respect to Plaintiffs' racial harassment claim.

1. Plaintiffs Cannot Establish a Prima Facie Case of Racial Harassment

To establish a Title VII hostile work environment claim, Plaintiffs must establish, under the totality of the circumstances, that: (1) they suffered intentional discrimination because of their race; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected them; (4) the discrimination would have detrimentally affected a reasonable person of the same race in the same position; and (5) that respondeat superior liability exists. See Andrews v. City of Phila., 895 F.2d 1469, 1482 (3d Cir. 1990). Thus, to prevail on a claim for racial harassment, a plaintiff must show that his workplace was "permeated with discriminatory intimidation, ridicule, and insult that [was] sufficiently severe or pervasive to alter the conditions of [his] employment and create an abusive working environment." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (cites and quotes omitted). It is not enough for a plaintiff to show that he,

subjectively, believed his work environment to be hostile. Rather, he must show that a reasonable person would have found it so. Id. The plaintiff also cannot simply show that his work environment was hostile in general. Rather, he must show that her work environment was hostile because of his race. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998).

In analyzing hostile work environment claims, federal courts will look to all of the circumstances including the “frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, *or a mere offensive utterance*; and whether it unreasonably interferes with an employee’s work performance.” Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993) (emphasis added). In Harris, the Supreme Court held that the “mere utterance of an . . . epithet which engenders offensive feelings in an employee does not sufficiently affect the conditions of employment to implicate Title VII.” Id. At 21. The principle that the mere utterance of a racial epithet is insufficient to support a Title VII harassment claim because such conduct is not “pervasive and regular” has been widely accepted among the courts of the Third Circuit. See King v. City of Philadelphia, 66 F. App’x 300, 305 (3d Cir. 2003) (affirming summary judgment in favor of defendant and finding that a single racial epithet and physical altercation were isolated and sporadic incidents that did not demonstrate a pervasive atmosphere of harassment); Bell v. Waste Management, Inc., Civ. A. No. 03-992, 2004 WL 2451416, * 7 (D. Del. Oct. 29, 2004) (granting summary judgment for a defendant where plaintiff could only point to a single circumstance where he was subjected to a racial epithet); Walker v. Pepsi-Cola Bottling Co., Civ. A. No. 99-748, 2000 WL 1251906, *16 (D. Del. Aug. 10, 2000) (granting summary judgment for defendant because “[o]ne-time utterances of racial epithets simply do not rise to the level of racial harassment); Woods v. Bentsen, 889 F. Supp. 179, 187 (E.D. Pa. 1995) (one racial epithet insufficient as a matter of law to create hostile work environment). See also

Daso v. Grafton Sch., 181 F. Supp. 2d 485, 493 (D. Md. 2002) (single incident in which supervisor yelled at the plaintiff, "Next time you all niggers lock the door, I'm going to write you up," was insufficient to create hostile work environment under Title VII); Walls v. Turano Baking Co., No. 01 C 3577, 2002 WL 31236406, at *3 (N.D. Ill. Oct. 1, 2002) (supervisor's reference to plaintiff as "nigger" insufficient to create hostile work environment under Title VII).

Judged against these standards, the undisputed record evidence firmly establishes that Plaintiffs' harassment claim fails as a matter of law because Plaintiffs cannot establish the second prong of their prima facie case, which requires them to prove that they were subject to harassment which was pervasive and regular. Here, Mr. Koch told Plaintiffs that on one occasion he heard Brad Dodson make a comment allegedly referring to Mr. McLean and Mr. Coleman as "niggers." (Exhibit 3 [McLean Dep.] at 10: 8-19; Exhibit 2 [Coleman Dep.] at 11:14-23; Exhibit 1 [Koch Dep.] at 10:23-11:22, 13:2-7). It is undisputed that Mr. McLean and Mr. Coleman were not present during this conversation and neither Plaintiff actually heard Brad Dodson make the alleged statement. (Exhibit 3 [McLean Dep.] at 13:17-19; Exhibit 2 [Coleman Dep.] at 11:24-12:3, 17:1-14). It is also undisputed that aside from the incident on May 31, 2005, neither Mr. McLean nor Mr. Coleman have identified any other instances of alleged racial discrimination, nor did the report any other such incident to CCG during their employment. (Exhibit 3 [McLean Dep.] at 10:2-5; Exhibit 2 [Coleman Dep.] at 11:1-10). This one incident is simply insufficient to prove that Plaintiffs were subject to harassment which was pervasive and regular. Even granting Plaintiffs every benefit of the doubt, their harassment claim is vastly deficient, and therefore this Court should enter summary judgment on this claim.

D. The Court Should Grant Summary Judgment With Respect to Plaintiffs' Retaliation Claim

Plaintiffs also claim that CCG transferred them and terminated their employment in retaliation for their alleged complaints about Brad Dodson's remark in violation of Title VII. The court should grant CCG summary judgment on Plaintiffs' retaliation claim because Plaintiffs cannot establish a causal connection between their protected activity and any adverse employment action.

1. Plaintiffs Cannot Establish a Prima Facie Case of Retaliation

Plaintiffs' retaliation claims are also subject to the McDonnell Douglas burden-shifting framework. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 278 (3d Cir. 2000). To make out a prima facie case of retaliation under Title VII, Plaintiff must show: (1) participation in a protected activity known to the defendant; (2) an employment action disadvantaging the plaintiff; and (3) a causal connection between the protected activity and the adverse employment action. Weston v. Pennsylvania, 251 F.3d 420, 430 (3d Cir. 2001); 42 U.S.C. § 2000e-3(a). If the elements of a prima facie case are met, the defendant must then proffer a legitimate, non-retaliatory reason for the adverse action. Mroczek v. Bethlehem Steel Corp., 126 F. Supp. 2d 379, 388 (E.D. Pa. 2001). The plaintiff must then point to evidence that this reason is actually a pretext for unlawful retaliation. Id. At 389.

There is absolutely no evidence to suggest that Plaintiffs' transfer and eventual layoff were causally connected to their complaint about Brad Dodson's racial comment. To determine whether there is a causal connection between a protected activity and an adverse employment action, courts focus on two main factors: timing and circumstantial evidence of ongoing antagonism. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 280 (3d Cir. 2000). With respect to Plaintiffs termination, this is not a case where the temporal proximity between the protected

activity and the adverse action is “unusually suggestive.” Id. In order to prove causation by temporal proximity, the retaliatory conduct usually must occur within a relatively short time period of the protected conduct. See Zappan v. Pennsylvania Board of Probation and Parole, Civ. A. No. 00-1049, 2002 WL 32174230, *10 (E.D. Pa. Nov. 25, 2002) (finding that a two month separation between the protected activity and the adverse employment action is “not unusually suggestive enough to establish causation”); Pritchett v. Imperial Metal and Chemical Co., Civ. A. No. 96-0342, 1997 WL 570929, 4 (E.D. Pa. Sept. 8, 1997) (same). Here, Plaintiffs were laid off more than four months after they complained about Brad Dodson’s remark.

Moreover, Plaintiffs cannot point to any circumstantial evidence sufficient to raise the inference that their protected activity was likely the reason for any adverse action. Weston, 251 F.3d at 430. As mentioned above, Plaintiffs were transferred from New Castle to West Chester because the work Plaintiffs were performing for Verizon in New Castle was ending and more work was available in West Chester for another Verizon contract. (Exhibit 13 [Clements Decl.] at ¶ 2). Far from an adverse action, this was continuation of their employment. There is simply no evidence that this transfer was somehow motivated by anti-African American animus. Moreover, as Mr. Coleman himself admitted, it was the nature of the work at CCG that employees would be transferred from one job site to another. (Exhibit 2 [Coleman Dep.] at 8:13-9:3).

While it is true that Plaintiffs were told that they could not drive the company truck home, while other supervisory employees could, this was because only specifically approved supervisory personnel were authorized to take company vehicles home. (Exhibit 14 [Gates Decl.] at ¶ 3-4). Foremen who were permitted to take company vehicles home had been grandfathered in under an old policy. (Id. At ¶ 5-6).

Finally, there is no evidence that Plaintiffs' eventual layoff for lack of work was somehow motivated because of their race. Plaintiffs were not the only CCG employees laid off due to lack of work. (Exhibit 3 [McLean Dep.] at 38:10-19). In fact, Plaintiffs were among seven employees who were all laid off on October 6, 2005 due to lack of work. (Exhibit 15 [D0574-D780]; Exhibit 13 [Clements Decl.] at ¶ 3). Four out of the seven employees were outside of Plaintiffs protected class. (Exhibit 13 [Clements Decl.] at ¶ 3).

2. Plaintiffs Cannot Establish that CCG's Stated Reasons for its Decisions are Pretextual

Even assuming arguendo that Plaintiffs can establish a prima facie case of retaliation, they can point to no evidence that the stated reasons for their transfer or layoff were pretextual. To survive summary judgment, a plaintiff must adduce sufficient evidence which discredits the employer's reasons for taking the adverse actions, or which shows that retaliation was more likely than not a motivating and determinative factor in that decision. Fuentes, 32 F.3d at 764. To establish pretext, a plaintiff must do more than simply argue that a factfinder should not believe the employer's reason for taking the adverse actions. Fuentes, 32 F.3d at 765. Plaintiff must "demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them 'unworthy of credence,' and hence infer that the employer did not act for the asserted non-discriminatory reasons." Id. (citations omitted). For the same reasons stated in Section IV.B.2 above, there is simply no evidence from which a factfinder could reasonably infer that CCG's legitimate reasons for its employment actions were pretext for unlawful retaliation.

V. CONCLUSION

For the reasons set forth above, there are no genuine disputes of material fact and the Court should grant summary judgment.

Respectfully submitted,

/s/ Daniel M. Silver

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Dated: November 28, 2007

Attorneys for Defendant

Communications Construction Group, LLC

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 McLEAN, et al.,)
5 Plaintiffs,)
6 vs.) Action
7 COMMUNICATIONS CONSTRUCTION) No. 06-617-SLR
8 GROUP, LLC,)
9 Defendant.)

10 - - -

11 Deposition of ROBERT KOCH
12 Monday, November 5, 2007

13 - - -

14 The deposition of ROBERT KOCH, called as a
15 witness by the Defendant, pursuant to notice and the
16 Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
18 undersigned, Melissa L. Fenster, a Notary Public in
and for the Commonwealth of Pennsylvania, at the
offices of Morgan, Lewis & Bockius, LLP, One Oxford
Centre, 32nd Floor, Pittsburgh, Pennsylvania 15219,
commencing at 9:00 o'clock a.m., the day and date
above set forth.

19 - - -

20 COMPUTER-AIDED TRANSCRIPTION BY
21 MORSE, GANTVERG & HODGE, INC.
22 PITTSBURGH, PENNSYLVANIA
412-281-0189

23 ORIGINAL - - -

24

25

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 (No appearance.)

4 On behalf of the Defendant:

5 Morgan, Lewis & Bockius, LLP:
6 Thomas B. Huggett, Esquire
7 1701 Market Street
Philadelphia, Pennsylvania 19103-2921

8 - - -
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25

1 ROBERT KOCH

2 called as a witness by the Defendant, having been
3 first duly sworn, as hereinafter certified, was
4 deposed and said as follows:

5 DIRECT EXAMINATION

6 BY MR. HUGGETT:

7 Q Mr. Koch, would you state your full name
8 for the record.

9 A Robert James Koch, Jr.

10 Q What is your present home address?

11 A RR 2 Box 361, Portage, Pennsylvania, 15946.

12 Q What's your phone number?

13 A 814-695-9020.

14 Q Have you ever been deposed before,
15 Mr. Koch?

16 A No.

17 Q A deposition is the process during the
18 course of a lawsuit in which the parties to the
19 lawsuit are entitled to ask questions of witnesses.
20 And the purpose of that is for the parties to learn
21 the facts about the case before proceeding to a
22 trial.

23 So the purpose here today is to ask
24 questions of you related to a lawsuit brought by
25 Brian Coleman and Jason McLean against Communications

1 It would have been in July.

2 Q You're looking at something.

3 What is that?

4 A Reference from New Enterprise.

5 Q Do you mind if I --

6 So this is your certification of road test
7 for your new company?

8 A Yeah.

9 Q New Enterprise?

10 A Correct.

11 Q And it states that the road test was
12 14 July 2005?

13 A Correct, so it was in July whenever I left
14 CCG.

15 Q We were talking earlier about the issues
16 that brought about this lawsuit. You identified a
17 statement.

18 Can you in your own description tell me
19 what you remember about that event when it first
20 occurred, when you first heard such a statement?

21 A I don't know when it occurred.

22 Q Okay.

23 This was a conversation that you had with
24 Brad Dodson, correct?

25 A Yeah, it was Brad Dodson.

1 Q Who is Brad Dodson?

2 A He was an employee.

3 Q Where was the conversation that you had
4 with him?

5 A On one of the job sites.

6 Q It was out on a job site?

7 A Yeah.

8 Q Was there anyone else present for this
9 conversation?

10 A When he said it, yeah.

11 Q Who else was present?

12 A Joe Tatsch.

13 Q And what was the -- how did this
14 conversation come about?

15 A We were -- I think it was on a Friday,
16 Thursday, Friday. I think it was a Friday because we
17 were leaving, and we parked equipment up past him.
18 And we were walking on down by, and he said to us it
19 because we were leaving.

20 He said, it must be nice to leave. I said,
21 well, you get work done -- that what he said, he said,
22 you don't have the two dumb niggers working with you.

23 Q So you were just going past him at that
24 point. It wasn't an ongoing conversation about
25 anything?

1 A No, no. We stopped for maybe a minute or
2 two, and then we left.

3 Q What did you say to him in response to that
4 comment?

5 A Nothing, just left.

6 Q Was Mr. Tatsch standing there?

7 A Yeah. Joe and I were both standing there.

8 Q Did he say anything?

9 A No.

10 Q Did anybody say anything after --

11 A No.

12 Q -- he said -- made that statement?

13 A No. We just looked at him and left.

14 Q Did you report that to anyone at that point
15 in time?

16 A No. We left right from there and went
17 straight home. We didn't go to the shop or nothing.

18 Q Is it correct that was Memorial Day
19 Weekend?

20 A It could have been. I'm not going to say
21 that it is or it isn't. I'm not sure.

22 Q So that was all that happened on that day.
23 Nothing else that you can recall --

24 A No.

25 Q -- occurring on that particular day?

1 A No.

2 Q Did he identify by name who he was
3 referring to?

4 A No. He didn't say no names, no.

5 Q Did you know who he was referring to?

6 A He said you don't have two working for you,
7 and he only had those other two guys working for him.

8 Q When you say "working for him," what do you
9 mean?

10 A He was more or less the boss of the crew,
11 and he had three guys working under him.

12 Q What is the boss of the crew? Is that
13 referred to as the foreman?

14 A Right.

15 Q And is that a management employee or just
16 the head of the particular crew?

17 A It's just more or less the head of the crew.

18 Q How many employees are generally in a crew
19 working on the underground work?

20 A They ranged anywhere from four to six.
21 Some had more. It all depended on what they were
22 doing and how many guys they had to have.

23 Q Whose crew were you working on at that
24 point in time?

25 A I was working with Bob Miller and

1 Q Correct?

2 A I guess, yeah. As far as I can remember,
3 yes, just them two and me.

4 Q Were you present for any conversation
5 between Brian Coleman and Jason McLean about that
6 statement?

7 A No.

8 Q Were you present when they spoke to
9 Brad Dodson?

10 A No.

11 Are you talking about Jason and them?

12 Q Yes.

13 A No.

14 Q You've testified that pursuant to the
15 direction from human resources not to discuss the
16 matter after you were interviewed by them, you didn't
17 have any further discussions about this?

18 A No.

19 Q Did you hear anyone else have any
20 discussions about it?

21 A No.

22 Q You said that Brian and Jason joined your
23 crew after that event?

24 A Yes.

25 Q Do you know approximately how long they

1 were on your crew after that?

2 A No.

3 Q Do you know -- I may have asked you this,
4 but do you know whether they were still working for
5 CCG at the time you left in July?

6 A I don't know if they were or not whenever I
7 left because they weren't -- they weren't with us, and
8 we were down at, you know, another site, different
9 places, so I couldn't tell you if they were still
10 working or not.

11 Q Working at different sites was common at
12 CCG?

13 A Yes.

14 Q You finish in one area and you move to the
15 next?

16 A Move to the next area, finish there and go
17 to the next area. You might only be in there a day
18 one area and go to another area the same day.

19 Q It's a part of -- simply a part of what
20 they do?

21 A Right. They bounce around different
22 areas.

23 Q At the time you left in or about July of
24 2005, what was the state of the work available at CCG,
25 if you know?

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON McLEAN and)
BRIAN COLEMAN,)
) C.A. No. 06-617 SLR
Plaintiffs,)
)
-vs-)
)
COMMUNICATIONS CONSTRUCTION)
GROUP, LLC,)
)
Defendant.)

Deposition of BRIAN COLEMAN taken pursuant
to notice at the law offices of Young, Malmberg &
Howard, 30 The Green, Dover, Delaware, beginning at 1:00
p.m. on September 13, 2007, before Julianne LaBadia,
Registered Diplomate Reporter and Notary Public.

APPEARANCES:

RONALD POLIQUIN, ESQ.
YOUNG, MALMBERG & HOWARD
30 The Green
Dover, Delaware 19901
For the Plaintiff

THOMAS BENJAMIN HUGGETT, ESQ.
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Philadelphia, Pennsylvania 19103
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WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com



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COPY

Brian Coleman

2

1

BRIAN COLEMAN

2

The deponent herein, having first been

3

duly sworn on oath, was examined and

4

testified as follows:

5

DIRECT EXAMINATION

6

BY MR. HUGGETT:

7

Q. Would you state your name for the record?

8

A. Brian T. Coleman.

9

Q. Mr. Coleman, by whom are you presently

10

employed?

11

A. Myself.

12

Q. And what do you do?

13

A. The same thing that I used to do there.

14

Q. When you say "there," you're referring to

15

Communication Construction Group?

16

A. Yes, sir.

17

Q. Have you worked for any other company since you

18

worked for CCG?

19

A. Yeah. I mean I work for myself, but I still

20

sub work out. I get it from somebody else.

21

Q. Who do you get work for?

22

A. JT Enterprises, now it's S&M, out of Richmond,

23

Virginia, or Ashland, Virginia.

24

Q. And do you get a paycheck from them? Or how



1 does that work for you?

2 A. Yeah. A paycheck.

3 Q. And what do you presently make?

4 A. What do you mean? As far as what?

5 Q. On an average week.

6 A. I haven't got a paycheck yet. I just started
7 back working.

8 Q. You just started working?

9 A. Yeah. Three weeks out. I been working for
10 three weeks. Now I'll just get a paycheck this Friday.
11 It's production pay, the same type pay that I was making
12 there.

13 Q. Same type of rates? Higher rates?

14 A. No. Lower rates.

15 Q. You said you've only been working for them for
16 three weeks?

17 A. Three weeks.

18 Q. And when were you working before that?

19 A. Probably like four months before that.
20 Approximately. Give or take.

21 Q. How long have you worked for JT Enterprises?

22 A. Oh, about a year, I guess, a little over a
23 year.

24 Q. So, did you work for anyone else?



1 A. I'm not sure.

2 Q. And when did that move to New Castle?

3 A. I have no idea. You asking me stuff that was
4 like a couple years back. I can't remember. CCG should
5 have that information.

6 Q. Okay. Well, at this point, I am just exploring
7 what you recall, and, yeah, we'll -- your attorney has
8 the right to ask questions of our employees, as well.

9 A. That's fine.

10 Q. And we can go through all that. Do you know
11 why the work moved from Westchester down to New Castle?

12 A. No.

13 Q. And at some point, the work moved back from New
14 Castle back up to Westchester, correct?

15 A. From where?

16 Q. From New Castle, Delaware, back up to
17 Westchester?

18 A. Yeah.

19 Q. Did it go back and forth over a period of
20 years, or just --

21 A. I mean it was a traveling company. That's what
22 the company did. They had job sites all across the
23 United States. Wherever they want to send you, that's
24 where you have to go, if you want the job.



1 Q. And that's in the nature of the contracts and
2 work that they do?

3 A. Yeah.

4 Q. What was the last position that you held with
5 CCG?

6 A. I was a foreman.

7 Q. When did you become a foreman?

8 A. Well, I was a foreman when I was doing the
9 underground FIOS work, before that Verizon work started.
10 After that incident happened with Mr. Dodson, Mr. Gates,
11 I asked him if I could run my own crew, he told me he
12 didn't know if I was capable of doing that, and that's
13 when he tried -- gave me a crew and gave me a truck and
14 took the truck away. After that incident happened, after
15 I got back off vacation from California.

16 Q. The incident that you're referring to is the
17 May 31 conversation, Mr. Robert Koch told you about a
18 comment that was allegedly made by Brad Dodson; is that
19 correct?

20 A. I guess that was May 31st. Yeah. I mean if
21 that was the right day. That was a long time ago. But
22 it wasn't just Robert Koch. It was a couple other guys,
23 as well.

24 Q. We'll get back to that. And it was after that



Brian Coleman

11

1 Q. 2005. Now, you had worked for CCG for a number
2 of years prior to May 31st, 2005?

3 A. Yes.

4 Q. Were there any events that occurred prior to
5 that date, in your employment --

6 A. With me?

7 Q. With you.

8 A. No, sir.

9 Q. Didn't have any problems --

10 A. No problem at all.

11 Q. -- with the company or working? Okay. In your
12 own words, if you would, tell me what happened on May
13 31st, what the conversation was with Mr. Koch.

14 A. Well, it was me and Jason McLean, saw Mr. Koch,
15 I guess, and asked him if they were making any money. It
16 was like -- some weeks you do good and some weeks you do
17 bad. This was one of those bad spells. And he had told
18 us what Mr. Dodson said, about "We weren't making any
19 money, but at least you don't have to work with two dumb
20 niggers."

21 Q. And when you said Mr. Dodson, you're referring
22 to Brad Dodson?

23 A. Brad Dodson. He was my foreman.

24 Q. You weren't present for this conversation



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Brian Coleman

12

1 between Mr. Dodson when he allegedly made this statement
2 to Mr. Koch?

3 A. No. I wasn't.

4 Q. Do you know when that happened?

5 A. It was a Friday before that weekend, or -- we
6 had a weekend off or something, a holiday or something.
7 A couple days that went past, and that Monday, I think,
8 they told us.

9 Q. What did you say to Mr. Koch after he gave you
10 this alleged statement?

11 A. Well, you keep saying Mr. Koch. It wasn't just
12 Mr. Koch who was telling me.

13 Q. Okay. Who else -- where did that conversation
14 take place?

15 A. Right in the neighborhood where we were working
16 at.

17 Q. Okay. And was Mr. Koch working with you?

18 A. No. Mr. Koch wasn't working with us.

19 Q. Okay.

20 A. We all worked -- there was a street here, a
21 street here. Everybody -- the neighborhood was broken up
22 into sections. This crew had this section, this crew had
23 this section. We had to go around the corner on the
24 backhoe to get stone. We were getting boxes. And we



Brian Coleman

17

1 A. It says me, the big boss -- he called me a dumb
2 nigger before the police came.

3 Q. Okay. You didn't tell the police that he
4 called you a dumb nigger at that point in time?

5 A. Yes, I did. Yes, I did.

6 Q. Did he call you that, on May 31st?

7 A. He called me that before May 31st.

8 Q. You heard that he called you that?

9 A. Yeah.

10 Q. You never heard that directly from him, did
11 you?

12 A. From a couple guys.

13 Q. You never heard that --

14 A. No. I didn't hear that directly from him.

15 Q. Okay.

16 A. Okay.

17 Q. So, did you mean to tell the police that you
18 heard it directly from him?

19 A. I never told the police that I heard it
20 directly from him.

21 Q. If you look at the --

22 A. When the police came there, they took my
23 statement. They said that there was more than one party
24 who heard him say it, so that was admissible in court, it



Brian Coleman

23

1 Q. How did you approach him?

2 A. I didn't go up there yelling at him. He jumps
3 off the machine yelling at me, getting in my face.
4 Talking about "I don't know what you're trying to do. I
5 don't know what you're trying to prove. I'm a Dodson."
6 That's when he was poking me in my chest.

7 Q. You said you didn't yell at him.

8 A. No, I didn't yell at him.

9 Q. What was the first thing that you said to him?

10 A. I said, "Man, what's going on? I'm over here
11 busting my rump for you, how you going to call me a dumb
12 nigger?" Or something to that effect.

13 Q. What was his first response?

14 A. I don't exactly remember what his first
15 response was. He was on the machine. I don't think he
16 even quite heard me when I first said that. So he jumped
17 off the machine, you know what I mean, and I was like,
18 "Yo, what's up?" You know what I mean. And I asked him
19 about the dumb nigger incident or remark. And that's
20 what he said, "I don't know what you trying to start. I
21 don't know what you're trying to prove or whatever." And
22 that's when the poking started.

23 And that I should get the hell away from
24 there. Never once did I put my hands back on him, so I



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Brian Coleman

24

1 don't know what you're trying to get at, or what you're
2 trying to ask me.

3 Q. I'm just trying to figure out exactly what
4 happened. So it's your testimony you did not touch him?

5 A. No. I did not touch him.

6 Q. Didn't poke him in the chest with your finger
7 back?

8 A. No, I did not. If I would have poked him in
9 the chest I would have been arrested, too, right? Let me
10 ask you a question.

11 MR. POLIQUIN: You're only supposed to
12 answer questions.

13 Q. You called the police.

14 A. Yes, I did.

15 Q. And they came out?

16 A. I don't think it was that day. I think it was
17 when I got back off of my vacation.

18 Q. You don't recall them being there on May 31st?

19 A. If May 31st was when I got back from my
20 vacation, that's when they was there. If the incident
21 happened before May 31st -- they didn't come that first
22 day when the incident happened. They came out there
23 after. Well, as a matter of fact, they did come out
24 there the 31st, and what happened was, they told me I had



EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON McLEAN and)
BRIAN COLEMAN,)
) C.A. No. 06-617 SLR
Plaintiffs,)
)
-vs-)
)
COMMUNICATIONS CONSTRUCTION)
GROUP, LLC,)
)
Defendant.)

Deposition of JASON McLEAN taken pursuant to notice at the law offices of Young, Malmberg & Howard, 30 The Green, Dover, Delaware, beginning at 9:13 a.m. on September 13, 2007, before Julianne LaBadia, Registered Diplomat Reporter and Notary Public.

APPEARANCES:

RONALD POLIQUIN, ESQ.
YOUNG, MALMBERG & HOWARD
30 The Green
Dover, Delaware 19901
For the Plaintiff

THOMAS BENJAMIN HUGGETT, ESQ.
MORGAN, LEWIS & BROCKIUS, LLP
1701 Market Street
Philadelphia, Pennsylvania 19103
For the Defendant

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
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ORIGINAL

Jason McLean

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JASON MCLEAN

The deponent herein, having first been
duly sworn on oath, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. HUGGETT:

Q. Would you state your name for the record,
please.

A. Jason A. McLean.

Q. And where do you reside, Mr. McLean?

A. In Dover.

Q. And what address?

A. 324 East Broad Stairs, Dover, Delaware 19904.

Q. How long have you lived at that address?

A. About six months.

Q. Where did you reside prior to that?

A. 1266 South Farmview Drive, Dover, Delaware
19904.

Q. And how long did you reside there?

A. 22 years.

Q. I would take that it's your parents' house?

A. Exactly.

Q. We are here today to take your deposition.
Have you ever been deposed before?



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1 A. Construction. Roads.

2 Q. How long were you with EPB?

3 A. I can't recall. Maybe six, seven months.

4 Q. Where did you work prior to that?

5 A. Carmike Cinemas.

6 Q. Is that a movie theater?

7 A. Yeah.

8 Q. How long did you work there?

9 A. About six years.

10 Q. Is that while you were in school?

11 A. Yes.

12 Q. Were you still in school at the time that you
13 worked for EPB?

14 A. No.

15 Q. What were you doing when you were first hired
16 by CCG?

17 A. Laborer, digging holes.

18 Q. And how long did you work as a laborer?

19 A. Maybe four months.

20 Q. What did you do after you worked as a laborer
21 for CCG?

22 A. Operator.

23 Q. And how long were you an operator for CCG?

24 A. Maybe two, three months.



1 Q. Did you hold any position after you were an
2 operator?

3 A. Foreman position.

4 Q. And how long did you hold that position?

5 A. The remainder of the time.

6 Q. That would be about five months?

7 A. Sure, yeah.

8 Q. Do you recall specifically when you were
9 promoted to foreman?

10 A. Not the exact date, no.

11 Q. Do you recall if that was after you made the
12 complaint of discrimination that's at issue in this case?

13 A. Yes.

14 Q. Is it correct that the issues that you're
15 bringing in this case begin on May 31 of 2005, when Brad
16 Koch told you about a comment supposedly made by Brad
17 Dodson -- or I'm sorry. Robert Koch told you about a
18 comment supposedly made by a Brad Dodson?

19 A. Can you repeat the whole question one more
20 time?

21 (Question read)

22 A. Yes.

23 Q. And that comment was allegedly a racial
24 comment?



1 A. Yes.

2 Q. Had anything occurred prior to May 31 of 2005,
3 in your employment with CCG, that you think is of any
4 significance to this matter?

5 A. No.

6 Q. All right. In your own words, if you would,
7 can you tell me what happened on May 31 of 2005.

8 A. I was digging a hole in the neighborhood that
9 we were working in, and Robert Koch rode by on a -- on a
10 machine, and he stopped. We had a conversation.

11 The conversation consisted of we were
12 talking about how nobody was making any money. He stated
13 that, "You wouldn't believe what Brad said about you last
14 week."

15 Then I asked him what he said. He said --
16 "We were talking that -- we were having the same
17 conversation. At that time, he said, 'yeah, nobody is
18 making any money, but at least you don't have to work
19 with two dumb niggers,'" quote, unquote.

20 At that time we approached Mr. Dodson. He
21 was drilling --

22 Q. When you said "we," who are you referring to?

23 A. Brian Coleman and I approached Mr. Dodson, who
24 was drilling underneath the street, around the corner



1 from where we were. We asked him if he made the
2 statement. He jumped off his machine, furious, started
3 waving his finger in my face, and then Brian's face, and
4 then him and Brian got into a verbal altercation, and he
5 started poking Brian in his chest.

6 At that time, I called Lisa Clemens, the HR
7 representative, the only phone number of anybody I had
8 from the company, other than Brad. I explained to her
9 what was going on at the present time. After that
10 confrontation, Brian called the police. After I got off
11 the phone with Lisa, Brad's brother Dave, the site
12 supervisor, and Mike Fender arrived on scene. That was
13 my first time meeting Mike Fender.

14 They tried to resolve the situation by
15 having us shake hands and go back to work. I stated that
16 that wouldn't work, because there's been some wrong
17 doings done. The police then arrived and took statements
18 from everybody involved, and then the day was over and we
19 went home.

20 Q. Okay. Let me go back through, get a little
21 more detail on some of that. You said you were digging a
22 hole. What were you digging a hole for?

23 A. Put in an underground vault.

24 Q. And is that the normal work that you were doing



1 at that time for CCG?

2 A. Yes.

3 Q. Yes?

4 A. Yes, sir.

5 Q. And Mr. Koch came by at that point, and you
6 were having a conversation about not making money. What
7 does that mean, not making money?

8 A. In that business, most people in the company
9 were making an excessive amount of money, anywhere from
10 \$2,000 to \$3,000 a week. So anything less than that, for
11 them is, quote, unquote, not making any money.

12 Q. You never made 2,000 to \$3,000 a week with CCG?

13 A. Never.

14 Q. And did you ever see anyone else's paycheck to
15 know exactly what they made?

16 A. Yeah. Yeah.

17 Q. Whose paycheck did you see?

18 A. Buddies like Josh. Brian. Previous -- before
19 I started working for CCG, I've known them before then.

20 Q. Were they doing the same kinds of installation
21 work that you were doing at that point in time?

22 A. No.

23 Q. What kind of work were they doing at that time?

24 A. Aerial.



1 Q. So, depending on the type of work that's being
2 done by the company, different amounts of money can be
3 made by employees?

4 A. Yes.

5 Q. Can you tell me to the best of your
6 recollection exactly what Mr. Koch said, after that,
7 about Mr. Dodson?

8 A. Exactly what I said.

9 Q. How did he make the transition from talking
10 about not making money to repeating this alleged
11 statement?

12 A. There was no transition. He just came right
13 out and said it.

14 Q. Why did he do that?

15 A. He's one of our friends. I would consider him
16 a friend.

17 Q. You weren't present for this comment allegedly
18 made by Brad Dodson?

19 A. No.

20 Q. This was the first time that you had heard
21 about it?

22 A. Yes.

23 Q. You didn't know whether, in fact, Mr. Dodson
24 had said this?



1 A. No.

2 Q. When you were hired, you received the CCG
3 employee manual, correct?

4 A. Yes.

5 Q. Did you read that?

6 A. Partially.

7 Q. Okay. Do you recall signing a statement that
8 you had read and understood the policies?

9 A. Yes.

10 Q. Did you understand that that manual had a
11 harassment policy in it?

12 A. If I signed, yes.

13 (McLean Exhibit 1 marked)

14 MR. HUGGETT: I introduce as Exhibit 1
15 the employee policy manual that has been previously
16 produced here, and the signed acknowledgment of
17 Mr. McLean.

18 BY MR. HUGGETT:

19 Q. On this document that we've marked as Exhibit
20 1, is that your signature?

21 A. Yes, sir.

22 Q. On January 10, 2005?

23 A. Yes, sir.

24 Q. When you were hired by CCG?



1 Q. Do you recall seeing the rate schedules?

2 A. Yes.

3 (McLean Exhibits 3 and 4 marked)

4 BY MR. HUGGETT:

5 Q. I've marked as Exhibit 3 the rate schedule for
6 Delaware FIOS work. Is that the rate schedule that you
7 have previously seen?

8 A. No. Never seen this piece of paper before.

9 Q. Okay. Can you describe what you've seen?

10 A. I seen a copy of just a brief rundown on the
11 back of my paycheck of what you get paid per foot.

12 Q. Is that this document?

13 A. It might be. It looks like a copy. I don't
14 remember seeing anything like this, but it was similar.

15 Q. Exhibit 4 is marked the southeast PA FIOS drops
16 for Pennsylvania rate schedule. Have you ever seen that
17 rate schedule?

18 A. No. They never provided us anything like this.

19 Q. Did you ever ask for a copy of the rate
20 schedule?

21 A. No.

22 Q. When were you promoted to the position of
23 foreman?

24 A. I don't recall the exact date. Take a stab,



1 maybe a month before I was laid off.

2 Q. And that was while you were working in
3 Westchester?

4 A. No. We were actually transferred up to Oaks,
5 Pennsylvania, at that time.

6 Q. Why did you go up to Oaks, Pennsylvania?

7 A. Because I was told to.

8 Q. Why did the company go up there?

9 A. I don't know.

10 Q. What kind of work was being done in Oaks,
11 Pennsylvania?

12 A. Same work.

13 Q. And just so we're clear, can you describe, when
14 you say same work, what was the work that was being done?

15 A. Underground utilities.

16 Q. When you were working in Angola, how did you
17 get to Angola?

18 A. Drove my car.

19 Q. Prior to working in Angola, had you always
20 driven your car to get to work?

21 A. Yes.

22 Q. And did you drive your car to get to work in
23 Westchester?

24 A. Partially.



1 before it was filed?

2 A. Yes.

3 Q. Did you sign a verification that it was
4 accurate?

5 A. I believe so.

6 MR. HUGGETT: I would make a request
7 for a copy of that if it exists. I don't have any
8 such -- I have a verification from Mr. Coleman,
9 but --

10 Q. In the Complaint, paragraph 28, it says "The
11 plaintiffs made \$1.20 per square foot, compared to \$2.80
12 per foot at the New Castle plant." Do you recall that
13 allegation?

14 A. Yeah.

15 Q. Okay. Upon what do you base the allegation
16 that you were paid \$1.20 per square foot?

17 A. Should have been \$1.20 per foot.

18 Q. Rates are based on linear feet of installation?

19 A. Whatever linear means. What do you mean by
20 linear?

21 Q. Distance from one point to another in a
22 straight line.

23 A. Okay. Yeah.

24 Q. And in fact, the rates that you were paid for



1 out of New Castle, it wasn't just one \$1.20 rate, was
2 there?

3 A. No.

4 Q. There were multiple rates depending on what
5 work you were doing?

6 A. Yes.

7 Q. So when you referred to the \$1.20, what are you
8 referring to?

9 A. The main course of action. Just the burying of
10 the pipe.

11 Q. When you were working in New Castle, you were
12 burying the main trunk line through the neighborhood,
13 correct?

14 A. Yes.

15 Q. When you were working out of Westchester, you
16 were burying lines from that main trunk directly to a
17 house, a drop?

18 A. Yes.

19 Q. And that's different work with different rates?

20 A. Same principle, different rates.

21 Q. At paragraph 27, it says, "The transfer
22 resulted in a substantial reduction in salary." Do you
23 recall that allegation?

24 A. Yes.



1 Q. Upon what is that based?

2 A. Deductions at the end of the day.

3 Q. And what are deductions?

4 A. Gas, food, room and board.

5 Q. Well, you were traveling back and forth daily
6 between home, so you didn't have room and board, did you?

7 A. Depending on what time we got off work. If we
8 got off work at 9:00 at night, we would just get a hotel.
9 No point in driving home.

10 Q. Why would food costs increase because you were
11 in Westchester as opposed to anywhere else? You have to
12 eat all the time, right?

13 A. We worked longer hours, so you ended up in the
14 field longer, so you got to spend more money on food.

15 Q. And if you're driving the company truck, who
16 pays for gas?

17 A. The company.

18 Q. In fact, in direct salary from the company, you
19 made more working at Westchester than you did in New
20 Castle?

21 A. In direct salary, yes.

22 Q. And you and Mr. Coleman weren't the only
23 employees transferred from New Castle to Westchester,
24 were you?



1 A. Yes, that day -- well, that week.

2 Q. Over time, all the employees were transferred
3 to Westchester, weren't they?

4 A. Just Brad and Frank, afterwards. I think they
5 were the only ones left.

6 Q. The rest were, in fact, laid off?

7 A. Quit.

8 Q. Didn't work for the company at all anymore?

9 A. Exactly.

10 Q. You were ultimately laid off of work from CCG?

11 A. Yes.

12 Q. Along with seven other employees?

13 A. I don't know how many.

14 Q. You weren't the only one laid off?

15 A. No.

16 Q. Mr. Coleman wasn't the only one laid off?

17 A. No.

18 Q. There were more than the two of you?

19 A. To my understanding.

20 Q. And you understood that you were being laid off
21 because the work had come to an end?

22 A. I didn't know why I was being laid off. There
23 was still work.

24 Q. No one told you why you were being laid off?



1 disciplined at all or not?

2 A. I have no idea.

3 Q. Do you know who Jonathan Gates is?

4 A. Yes.

5 Q. Who is Mr. Gates?

6 A. I believe his title is the regional supervisor
7 for CCG.

8 Q. And does he have any information relevant to
9 this matter?

10 A. He should have all of it.

11 Q. And why do you say that?

12 A. Because he's the regional supervisor for CCG.

13 Q. Was he a witness to any of the events?

14 A. No.

15 Q. Was he involved in any of the events?

16 A. No. Other than the revoking of our truck
17 privilege. According to my supervisor Bill, John said
18 you cannot drive the truck home anymore.

19 Q. Did you ever speak to Mr. Gates about that?

20 A. I called him and left him a message. Never
21 called me back.

22 Q. Wasn't your supervisor Brian Coleman?

23 A. My supervisor? No.

24 Q. He was your foreman?



EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON McLEAN and BRIAN COLEMAN,)
)
 Plaintiffs,)
) Civil Action
 v.) No. 06-617-SLR
)
 COMMUNICATIONS CONSTRUCTION GROUP,)
 LLC.,)
)
 Defendant.)

Deposition of DAVID E. DODSON taken
pursuant to notice at the law offices of Young &
Malmberg, P.A., 30 The Green, Dover, Delaware,
beginning at 1:00 p.m. on Friday, September 14, 2007,
before Christina M. Vitale, Certified Shorthand
Reporter and Notary Public.

APPEARANCES:

RONALD G. POLIQUIN, ESQUIRE
YOUNG MALMBERG & HOWARD, P.A.
30 The Green
Dover, Delaware 19901
For the Plaintiffs

THOMAS BENJAMIN HUGGETT, ESQUIRE
MORGAN LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, Pennsylvania 19103-2921
for the Defendant

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1330 King Street - Wilmington, Delaware 19801

(302) 655-0477

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COPY

David E. Dodson

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1 DAVID E. DODSON, the deponent herein,
2 having first been duly sworn on oath, was examined and
3 testified as follows:

4 BY MR. POLIQUIN:

5 Q. Good morning, Mr. Dodson, my name is Ron
6 Poliquin and I'll be taking your deposition today.
7 Have you ever had a deposition taken previous to this
8 deposition?

9 A. No.

10 Q. Do you understand the procedures for taking
11 your deposition?

12 A. Not really.

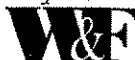
13 Q. Do you understand that you have been placed
14 under oath and you have an obligation to testify
15 truthfully?

16 A. Yes.

17 Q. Do you understand that even though we are in an
18 informal conference room your testimony here has the
19 same effect as if you were testifying in front of a
20 judge or a jury?

21 A. Yes.

22 Q. Do you understand that the court reporter will
23 take down everything that is said during the
24 deposition and that testimony will be transcribed into



David E. Dodson

23

1 Dodson?

2 MR. HUGGETT: Objection. Just to clarify
3 you are asking him what he was involved in?

4 BY MR. POLIQUIN:

5 Q. I'm asking if you can describe the events that
6 happened that day.

7 A. That was the first day, that was the day that
8 the allegations took place?

9 Q. Correct.

10 A. The first I heard about it Brad called me, told
11 me that Brian, Brian and Jason, came up to him -- up
12 to Frank and was yelling and screaming and he told me
13 I needed to get out there right away.

14 Q. And he called you on -- what did he call you
15 on?

16 A. I believe it was Nextel, which is a two-way.

17 Q. On that date what was your position with the
18 company?

19 A. Job supervisor.

20 Q. And were you the supervisor for that particular
21 job?

22 A. For?

23 Q. The job that Bradley Dodson, Jason McLean and
24 Brian Coleman were doing.



David E. Dodson

24

1 A. With my duties I'm the supervisor over all the
2 jobs. I do have a field supervisor, which is under
3 me.

4 Q. Who is the field supervisor?

5 A. The one that would have been with those -- in
6 charge of those guys would have been Mike Fender.

7 Q. And did Bradley Dodson say anything else to you
8 over the telephone?

9 A. Not that I can recall.

10 Q. Did you ask him any questions?

11 A. No. I got off the phone and I called Mike
12 Fender to go out there.

13 Q. And how long between the phone call that you
14 received from Bradley Dodson and the time that you
15 eventually came to the incident that happened?

16 A. I don't recall 100 percent, but I would say it
17 was within an hour.

18 Q. Where were you at the time you received the
19 phone call?

20 A. At our field office.

21 Q. Where is the field office at?

22 A. It was in New Castle, Delaware.

23 Q. And where was Bradley Dodson at?

24 A. I don't recall the address. I would have to --



EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 McLEAN, et al.,)
5 Plaintiffs,)
6 vs.) Action
7 COMMUNICATIONS CONSTRUCTION) No. 06-617-SLR
8 GROUP, LLC,)
9 Defendant.)

10 - - -
11 Deposition of JOSEPH TATSCH
12 Monday, November 5, 2007

13 - - -
14 The deposition of JOSEPH TATSCH, called as a
15 witness by the Defendant, pursuant to notice and the
16 Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
18 undersigned, Melissa L. Fenster, a Notary Public in
and for the Commonwealth of Pennsylvania, at the
offices of Morgan, Lewis & Bockius, LLP, One Oxford
Centre, 32nd Floor, Pittsburgh, Pennsylvania 15219,
commencing at 11:51 o'clock a.m., the day and date
above set forth.

19 - - -
20 COMPUTER-AIDED TRANSCRIPTION BY
21 MORSE, GANTVERG & HODGE, INC.
22 PITTSBURGH, PENNSYLVANIA
412-281-0189

23 ORIGINAL
24
25

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 (No appearance.)

4 On behalf of the Defendant:

5 Morgan, Lewis & Bockius, LLP:
6 Thomas B. Huggett, Esquire
7 1701 Market Street
Philadelphia, Pennsylvania 19103-2921

8 - - -
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13 2 Harassment policy acknowledgment 20

14 3 Incident Investigation Form 21

15 - - -

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1 JOSEPH TATSCH

2 called as a witness by the Defendant, having been
3 first duly sworn, as hereinafter certified, was
4 deposed and said as follows:

5 DIRECT EXAMINATION

6 BY MR. HUGGETT:

7 Q Would you state your full name for the
8 record.

9 A Joseph G. Tatsch.

10 Q Would you state your address?

11 A It's used to be HC 1 Box 70A, Madera,
12 Pennsylvania, but I think it's 348, something like
13 that now. They switched addresses up there for
14 emergency things.

15 My wife has it. I didn't even bother
16 looking at. I ain't much on paperwork. I stay away
17 from it.

18 Q You are here today pursuant to a subpoena
19 that my office sent to you, correct?

20 A Yes.

21 MR. HUGGETT: We'll mark that as Exhibit 1.

22 (Thereupon, Tatsch Deposition Exhibit No. 1
23 was marked for identification.)

24 Q I've given you a document that we've marked
25 as Exhibit 1.

1 A Like I said, I was walking down the road,
2 and he called Bobby Koch over.

3 Q Do you know what month or what day that
4 was?

5 A I couldn't tell you. I don't remember
6 dates too good. I go from day to day and I don't even
7 bother looking at a calendar.

8 Q Do you remember anything about what day of
9 the week it was?

10 A The only thing I can tell you is it might
11 have been a Wednesday or a Thursday or something like
12 that.

13 Q If I told you it was from the information
14 we have either May 26th or May 27th of 2005, would you
15 have any reason to disagree with that?

16 A No, because like I said I don't follow
17 along with dates. I just go from day to day. I don't
18 even pay attention to a calendar.

19 Q As I understand it, you and Bobby Koch were
20 walking down the road?

21 A Yeah.

22 Q From where?

23 A From up the road. We was getting pipe. We
24 was getting pipe or something. I forget what it was,
25 but we were walking down.

1 He called Bobby Koch down, and I still kept
2 walking. As I kept walking, I ended up I heard him
3 say to Bobby Koch or that -- because I guess them two
4 that you're talking about, that whatever his name is,
5 the two black guys --

6 Q Mr. Coleman and Mr. McLean?

7 A Yeah. He ended up I guess they were having
8 a dispute or something like that, and then he ended up
9 telling Bobby Koch -- like I said, he called them dumb
10 Fing niggers. That's all I can tell you.

11 I kept walking by. I didn't say nothing to
12 nobody because I know what it causes, so I stayed away
13 from it. I walked up onto the area where I was
14 working.

15 And, apparently -- I don't know if it was
16 Bobby Koch ended up talking to them two and saying
17 what Brad Dodson said or somehow they found out about
18 it some other way, but then there was a big dispute.

19 I guess they called the cops or that, and
20 they had the cops there to take testimony, and then
21 the next thing I know I got drug down into it.

22 Q When Brad Dodson was speaking to
23 Bobby Koch, there was no one else present?

24 A No, no one else.

25 Q And you were walking down the road?

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON McCLEAN and BRIAN COLEMAN,)
)
 Plaintiffs,)
) Civil Action
 v.) No. 06-617-SLR
)
 COMMUNICATIONS CONTRUCTION GROUP,)
 LLC,)
)
 Defendant.)

Deposition of LISA CLEMENTS taken
pursuant to notice at the law offices of Morgan, Lewis
& Bockius, LLP, 1701 Market Street, Philadelphia,
Pennsylvania, beginning at 1:06 P.m. on Wednesday,
September 19, 2007, before Christina M. Vitale,
Certified Shorthand Reporter and Notary Public.

APPEARANCES:

RONALD G. POLIQUIN, ESQUIRE
YOUNG MALMBERG & HOWARD, P.A.
30 The Green
Dover, Delaware 19901
For the Plaintiffs

COURTNEY A. WIRTH, ESQUIRE
MORGAN LEWIS & BOCKIUS, LLP
1701 Market Street
Philadelphia, Pennsylvania 19103
For the Defendant

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801

(302) 655-0477

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Lisa Clements

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1 LISA CLEMENTS, the deponent herein, having
2 first been duly sworn on oath, was examined and
3 testified as follows:

4 BY MR. POLIQUIN:

5 Q. Ms. Clements, have you spoken with your
6 attorney regarding the procedures for a deposition?

7 A. Yes.

8 Q. Do you understand you are under oath and you
9 are obligated to testify truthfully?

10 A. Yes.

11 Q. Even though we are sitting here in a conference
12 room your testimony has the same force and effect as
13 if you were testifying in a court of law.

14 A. Yes.

15 Q. Do you understand that the court reporter will
16 take down everything you say during the deposition and
17 that that testimony will be transcribed into a booklet
18 form?

19 A. Yes.

20 Q. And please understand that because everything
21 is verbal answer all your questions verbally meaning
22 no nods with the head, no shaking, everything has to
23 be communicated verbally.

24 A. Yes.



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1 incident happened?

2 A. No, I believe it was just Jason.

3 Q. Were you told anything about how you should go
4 about conducting the investigation into this complaint
5 of racial harassment?

6 A. No.

7 Q. Were there any restrictions placed on your
8 investigation?

9 A. No.

10 Q. And you could have interviewed anyone you
11 wanted to in connection with the investigation, is
12 that correct?

13 A. Yes.

14 Q. And you could look at any documents you wanted
15 to in connection with the investigation, is that
16 correct?

17 A. Yes.

18 Q. Were there any time limits placed on your
19 investigation?

20 A. Just my own to make sure that it was done
21 sooner than later.

22 Q. What steps did you take, if any, prior to
23 meeting with Jason McLean and Brian Coleman?

24 A. I conducted phone interviews with all



Lisa Clements

24

1 individuals involved.

2 Q. Did you review Brian Coleman's personnel file?

3 A. No, that was not done until after my
4 investigation face-to-face with the plaintiffs.

5 Q. Did you review Jason McLean's personnel file?

6 A. Again, it was done after the investigation
7 on-site.

8 Q. You had become aware that Brad Dodson was
9 arrested concerning events that happened on May 31st,
10 2005?

11 A. I was aware of that, yes.

12 Q. Are you aware that Brad Dodson did not
13 represent to the police that he didn't make the
14 statement that Brian Coleman and Jason McLean were two
15 dumb niggers?

16 A. I'm not aware of anything regarding that.

17 Q. Did you follow-up with the police, what the
18 result of the police arrest of Brad Dodson was?

19 A. No.

20 Q. Why not?

21 A. Because it was regarding Brad individually. It
22 wasn't against the company.

23 Q. But it involved the incident that we are
24 talking about that is the basis of this lawsuit, is



Lisa Clements

33

1 Q. At the end of the day when you came up with
2 your conclusions did you not believe Bob Koch and
3 Joseph Tatsch?

4 A. I still didn't -- can you rephrase that
5 question?

6 Q. Did you not believe Joseph Tatsch and Bob Koch
7 when they told you they heard Brad Dodson refer to
8 Jason McLean and Brian Coleman as two dumb niggers?

9 A. I did and I didn't because of -- I did and I
10 didn't believe them.

11 Q. What was the purpose of your investigation?

12 A. The purpose of my investigation was to find out
13 what actually had happened.

14 Q. And would that include finding out whether, in
15 fact, Brad Dodson made the statement?

16 A. Yes.

17 Q. And your conclusion was that he did not make
18 the statement?

19 A. My conclusion was that according to Brad he did
20 not make the statement.

21 Q. And that was after listening to both Bob Koch
22 and Joseph Tatsch?

23 A. Correct.

24 Q. What was your basis for giving Jason McLean and



WILCOX & FETZER LTD.
Registered Professional Reporters

EXHIBIT 7

Communications Construction Group, LLC.

Employee Warning Report

Employee's Name Brad Dodson Date of Warning 6/20/05 Job # 5007

Type of Violation

- ☐ Attendance
 ☐ Safety Violation
 ☐ Work Quality
 ☒ Insubordination
☐ Lateness/Leave Early
 ☒ Violation of Policy
 ☐ Other _____

Warning Information

Violation Date 5/31/05 Violation Time Mid-Day Location of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
An allegation was made that Brad used a racially derogatory remark. Brad denies making the statement he was accused of making. Additionally, during a heated conversation with Brian Coleman, Brad used physical contact in an inappropriate manner.	<input checked="" type="checkbox"/> I agree with the company's statement <input type="checkbox"/> I disagree with the company's statement; <div style="text-align: center;"><u>Explanation</u></div>

★If necessary, use the back of the form to complete your explanation ★

Action Taken As Result Of Warning

Brad violated CCG's Harassment policy by engaging in inappropriate physical contact with an employee. To the extent any statement Brad made was either racially derogatory or racially insensitive, that would constitute a further violation of CCG Policy. A copy of CCG's Harassment Policy is being reissued. If he should violate any CCG policy again, he will be subject to further discipline, up to and including termination.

MUST BE COMPLETED

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: [Signature] Date: 6/21/05

Signature of Person Preparing Warning: [Signature] Date: 6/17/05

Supervisor's Signature (if different): [Signature] Date: 6-21-05

EXHIBIT 8

Communications Construction Group, LLC.

Employee Warning Report

Employee's Name Bob Koch Date of Warning 6/20/05 Job # 5007

Type of Violation

- ☐ Attendance
 ☐ Safety Violation
 ☐ Work Quality
 ☐ Insubordination
☐ Lateness/Leave Early
 ☒ Violation of Policy
 ☐ Other _____

Warning Information

Violation Date 5/31/05 Violation Time Morning Location of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
<p>During a conversation between Bob Koch and Brad Dodson which took place on 5/27/05, Bob has made a claim that he heard Brad Dodson make a racially derogative comment about two other employees from #5007. Rather than following the Company procedure and reporting the alleged racially derogatory remark to the Project Supervisor and/or HR, on 5/31/05, Bob told Jason McLean and Brian Coleman about the comment and that it was said by Brad Dodson.</p>	<p> <input type="checkbox"/> I agree with the company's statement <input type="checkbox"/> I disagree with the company's statement; <div style="text-align: center;"><u>Explanation</u></div> </p>

★If necessary, use the back of the form to complete your explanation ★

Action Taken As Result Of Warning

Bob violated CCG's Harassment Policy by not following the Complaint Procedure and by spreading rumors at work. A copy of CCG's Harassment Policy and Complaint Procedure are being reissued. If any company violation should occur again, Bob will be subject to further disciplinary action, up to and including termination.

MUST BE COMPLETED

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: [Signature] Date: 6-21-05

Signature of Person Preparing Warning: [Signature] Date: 6/17/05

Supervisor's Signature (if different): [Signature] Date: 6-21-05

EXHIBIT 9

Communications Construction Group, LLC.

Employee Warning Report

Employee's Name Jason McLean Date of Warning 6/20/05 Job # 5007

Type of Violation

- ☐ Attendance
 ☐ Safety Violation
 ☐ Work Quality
 ☐ Insubordination
☐ Lateness/Leave Early
 ☒ Violation of Policy
 ☐ Other _____

Warning Information

Violation Date 5/31/05 Violation Time Mid-Day Location of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
<p>Jason was involved in a conversation with Brian Coleman and Bob Koch during which he claims to have been told by Bob Koch that a racially derogative comment about Jason McLean and Brian Coleman was made by Brad Dodson. Rather than following company procedure and reporting the issue to the Project Supervisor and/or HR, Jason left his job site during work hours and approached Brad Dodson to confront him about the comment.</p>	<p> <input type="checkbox"/> I agree with the company's statement <input checked="" type="checkbox"/> I disagree with the company's statement; <u>Explanation</u> I never left my job site. We all were working in the same area. </p>

★If necessary, use the back of the form to complete your explanation ★

Action Taken As Result Of Warning

Jason violated CCG's Harassment Policy by not following the Complaint Procedures. He also violated Company policy by leaving his job site during work hours. A copy of the Company's Harassment Policy and Complaint Procedures are being reissued. If this type of violation occurs again, Jason will be subject to further disciplinary action.

MUST BE COMPLETED

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: Jason McLean Date: 6-21-05

Signature of Person Preparing Warning: Lisa Clements Date: 6/17/05

Supervisor's Signature (if different): John Dato Date: 6-21-05

EXHIBIT 10

Communications Construction Group, LLC.

Employee Warning Report

Employee's Name Brian Coleman Date of Warning 6/20/05 Job # 5007

Type of Violation

- ☐ Attendance
 ☐ Safety Violation
 ☐ Work Quality
 ☒ Insubordination
☐ Lateness/Leave Early
 ☒ Violation of Policy
 ☐ Other _____

Warning Information

Violation Date 5/31/05 Violation Time Mid-Day Location of Violation New Castle, DE

Company Explanation of Incident	Employee Statement
<p>Brian was told by Bob Koch that Brad Dodson had made a racially derogative remark and it was directed towards Jason McLean and Brian Coleman. Upon hearing this, rather than following company policy and raising the issue with the Project Supervisor and/or HR, Brian left his job site and confronted Brad to question him about the comment.</p> <p>While doing so, Brian waved his finger at Brad's face in a menacing manner.</p>	<p><input type="checkbox"/> I agree with the company's statement</p> <p><input type="checkbox"/> I disagree with the company's statement; <u>Explanation</u></p>

★If necessary, use the back of the form to complete your explanation ★

Action Taken As Result Of Warning

Brian violated CCG's Harassment Policy by not following the Complaint Procedure and by engaging in inappropriate physical interaction with another employee. A copy of CCG's Harassment Policy and Complaint Procedure are being reissued. Brian also violated CCG's policy by leaving his job site during working hours. If this type of violation occurs again, Brian will be subject to further discipline, up to and including termination.

MUST BE COMPLETED

I have read and understand this warning and decision, and have had the opportunity to express my viewpoint.

Employee's Signature: Brian Coleman Date: 6/21/05

Signature of Person Preparing Warning: Luc Clemens Date: 6/17/05

Supervisor's Signature (if different): John Harte Date: 6-21-05

EXHIBIT 11

Receipt and Acknowledgment of Communications Construction Group Inc. Employee Policy Manual

This Employee Policy Manual is an important document intended to help you become familiar with CCG, and our policies. This Policy Manual will serve as a guide; it is not the final word in all cases. Individual circumstances may call for individual attention. Because company and economic conditions are always changing, the contents of this Policy Manual may be altered at any time at the will of the company without prior notice.

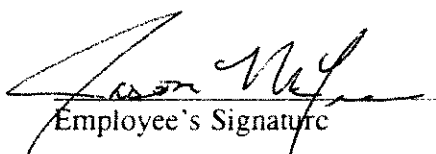
Please read the following statements and sign below to indicate your receipt and acknowledgment of the Communications Construction Group Employee Policy Manual.

- ◆ I have received and read a copy of CCG's's Employee Policy Manual. I understand that the policies, rules, and benefits described in it are subject to change or elimination at the sole will of the company at any time.
- ◆ I further understand that my employment may be terminated at any time, either by myself or by CCG, regardless of the length of employment or the granting of benefits of any kind, including but not limited to benefits which provide for vesting based on the length of my employment.
- ◆ I understand that no contract of employment other than "at will" has been expressed or implied, and that no circumstances arising out of my employment will alter my "at will" employment relationship unless expressed in writing, with the understanding specifically set forth and signed by myself and the President of CCG.
- ◆ I understand that I may be transferred to a different job site, which may be in a different location or state, and by refusing to do so I will have voluntarily resigned.
- ◆ I understand and agree to abide by all guidelines and testing requirements outlined in the Substance Abuse Prevention and Detection Program.

I understand that my signature below indicates that I have read and understand the above statements and I have received a copy of the CCG Employee Policy Manual.

Jason McLean
Employee's Printed Name

1-10-05
Date


Employee's Signature

D0018

EXHIBIT 12

Communications Construction Group Inc. Employee Policy Manual

This Employee Policy Manual is an important document intended to help you become familiar with CCG, and our policies. This Policy Manual will serve as a guide; it is not the final word in all cases. Individual circumstances may call for individual attention. Because company and economic conditions are always changing, the contents of this Policy Manual may be altered at any time at the will of the company without prior notice.

Please read the following statements and sign below to indicate your receipt and acknowledgment of the Communications Construction Group Employee Policy Manual.

- ◆ I have received and read a copy of CCG's Employee Policy Manual. I understand that the policies, rules, and benefits described in it are subject to change or elimination at the sole will of the company at any time.
- ◆ I further understand that my employment may be terminated at any time, either by myself or by CCG; regardless of the length of employment or the granting of benefits of any kind, including but not limited to benefits which provide for vesting based on the length of my employment.
- ◆ I understand that no contract of employment other than "at will" has been expressed or implied, and that no circumstances arising out of my employment will alter my "at will" employment relationship unless expressed in writing, with the understanding specifically set forth and signed by myself and the President of CCG.
- ◆ I understand that I may be transferred to a different job site, which may be in a different location or state, and by refusing to do so I will have voluntarily resigned.
- ◆ I understand and agree to abide by all guidelines and testing requirements outlined in the Substance Abuse Prevention and Detection Program.

I understand that my signature below indicates that I have read and understand the above statements and I have received a copy of the CCG Employee Policy Manual.

Brian Coleman
Employee's Printed Name

1-29-01
Date


Employee's Signature

EXHIBIT 13

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**JASON MCLEAN and
BRIAN COLEMAN,**

Plaintiffs,

v.

**COMMUNICATIONS CONSTRUCTION
GROUP, LLC,**

Defendant.

CIVIL ACTION NO. 06-617 (SLR)

DECLARATION OF LISA CLEMENTS

I, Lisa Clements, depose and state as follows:

1. I am a currently employed as the Human Resources Manager for Communications Construction Group, LLC ("CCG"). I have held this position since approximately August of 2005. Prior to August of 2005 I was employed as the Human Resource/Benefits Administrator.

2. On or about July 6, 2005 Brian McLean and Jason Coleman were transferred from CCG's Newcastle Delaware, worksite to its West Chester, Pennsylvania worksite. They were transferred because work on the Verizon contract in Delaware was ending and other work was available in Pennsylvania. After they were notified of the transfer by their supervisor, and before the transfer occurred, pursuant to a request from Mr. Coleman on or about July 5 I prepared a letter explaining the basis for the transfer for Mr. Coleman. A true and accurate copy of the letter is attached as Exhibit 1 hereto.

3. On October 6, 2005 several CCG employees who were working on Job No. 5008 were laid off due to lack of work. The names and races of these employees are as follows:

a. Marco Blancas (Hispanic)

- b. Alberto Carmona (Hispanic)
- c. Brian Coleman (African-American)
- d. Joel Diaz Guaddarama (Hispanic)
- e. Jason McLean (African-American)
- f. John Morris (African-American)
- g. Harry Ortiz (Hispanic)

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing information is true and correct, based upon my knowledge, information and belief.

DATED: November 27, 2007


LISA CLEMENTS

Exhibit

1

July 5, 2005

Mr. Brian Coleman
20 Tarpon Court
Willingboro, NJ 08046

Re: Employee Transfer

Attn: Brian

Due to the recent cut back in the amount of work given to Communications Construction Group, LLC in New Castle, DE (Job #5007) we will need to transfer you to Devault, PA (Job #5008). John Gates - Regional Manager – received notification from Job #5007 customer that the work was being cut in half. At the same time the work on Job #5008 is being increased.

Jason McLean, Harry Ortiz and you are all being transferred to the Devault, PA job. A 120 man Sub Crew is also being transferred to Devault, PA. Currently there are two underground crews working in New Castle, DE. The other crew uses a drill that is too large to be used on the Devault, PA job and the New Castle, DE job must have a drill on site; therefore this crew must stay at the New Castle, DE job.

As a reminder, I have enclosed a copy of the signed *Receipt & Acknowledgement* form. As stated in the company's Employee Policy Manual, "All employees should be advised that CCG may require that you transfer to another job site, which could be in a different location or state."

If you have any questions, please feel free to call me at (610) 696-1800 x588.

Thank you,

Lisa Clements
Human Resource/Benefits Administrator

encl

EXHIBIT 14

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**JASON MCLEAN and
BRIAN COLEMAN,**

Plaintiffs,

v.

**COMMUNICATIONS CONSTRUCTION
GROUP, LLC,**

Defendant.

CIVIL ACTION NO. 06-617 (SLR)

DECLARATION OF JOHN GATES

I, John Gates, depose and state as follows:

1. I am a currently employed as the Regional Supervisor for Communications Construction Group, LLC ("CCG"). I have held this position since 2000.
2. In my capacity as Regional Supervisor, I have personal knowledge of CCG policies and procedures, including use of company provided vehicles.
3. In 2005, it was brought to my attention by Bill Grover that Brian Coleman and Jason McLean were driving a company truck home from work.
4. According to CCG policy at that time, only specifically approved supervisory personnel were authorized to take company vehicles home.
5. The only foremen who were authorized to take company vehicles to and from their homes had been grandfathered in under an old policy where they had been personally assigned a company truck for their company and individual use. Those foremen who had previously worked on aerial installation of fiber optic cable across the state of Pennsylvania. At that time, CCG provided company trucks to foreman and allowed their use for travel home on

weekends because the job sites were extremely remote. Aerial cable installation work by CCG ended in late 2004 and early 2005 and company trucks were not provided to any foremen after that time. This practice was discontinued in part as a cost savings measure for the company.

6. Because neither Mr. Coleman nor Mr. McLean had ever performed aerial installation, and because neither had been personally assigned a company truck, it was against company policy for them to use a company truck to get to and from the company warehouse. Therefore, I instructed Mr. Grover to tell Mr. McLean and Mr. Coleman to stop driving the company truck home. Mr. Coleman and Mr. McLean were still permitted to use the truck for travel from the warehouse to the job site.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing information is true and correct, based upon my knowledge, information and belief.

DATED: November 27, 2007

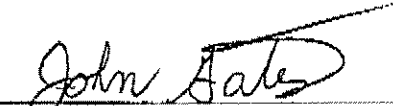

JOHN GATES

EXHIBIT 15

P. 02

RECEIVED FROM: 12152697568

80:51 50-01-90

1-800-822-3345
Communications Construction Group, LLC.
Record of Employment Separation

Employee's Name Marco Blancas Employee # 11993
 (print name)
 Last Day Worked 10-6-05 Job # 5008

Reason For Separation (check one)

Voluntary Resignation	Discharge
<input type="checkbox"/> Job Abandonment	<input type="checkbox"/> Absenteeism
<input type="checkbox"/> Job Relocation Refused	<input type="checkbox"/> Lateness
<input type="checkbox"/> Dissatisfied with Job	<input type="checkbox"/> Not Qualified
<input type="checkbox"/> Other Employment	<input type="checkbox"/> Violation of Company Policy
<input type="checkbox"/> Personal or Domestic	<input type="checkbox"/> Lack of Work
<input type="checkbox"/> Continuing Education	<input type="checkbox"/> Gross Insubordination
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Items Returned to CCG (check all that apply)

☐ Cell Phone ☐ Computer/Laptop ☒ Company Truck/Keys ☐ Building Keys ☐ CCG ID Cards ☐ Other _____

Explanation of Final Incident

Include all relevant dates and previous infractions. Continue on back of page if necessary.

MUST BE COMPLETED

Employee's Signature Marco Antonio Blancas Date 10/06/05
 Supervisor (signature) William J. Grove Jr. Date 10-6-05
 Supervisor (print name) William J. Grove Jr.
 Witness Signature _____ Date _____

Office Use Only

☐ If checked, the company chooses not to challenge claimant's eligibility to receive benefits.
 Health Insurance NA Stock NA Tool amount owed _____
 H.I. Reimbursement NA Garnishment _____ Vacation 3 1/2 days PC
 401(k) NA Direct Deposit _____ Computer/Network Access See attached
 ING NA Vehicle Allowance _____ Advances NA
 Pre-Paid Legal NA Cell Phone NA

PC 10/5 Human Resources
10-10-05 Payroll KM

P. 00

RECEIVED FROM: 12152697568

15:09 50-01-90

1-800-822-3-45

Communications Construction Group, LLC.

Record of Employment Separation

Employee's Name Alberto Carmona Employee # 11976
(print name)

Last Day Worked 10-6-05 Job # 5008

Reason For Separation (check one)

Voluntary Resignation	Discharge
<input type="checkbox"/> Job Abandonment	<input type="checkbox"/> Absenteeism
<input type="checkbox"/> Job Relocation Refused	<input type="checkbox"/> Lateness
<input type="checkbox"/> Dissatisfied with Job	<input type="checkbox"/> Not Qualified
<input type="checkbox"/> Other Employment	<input type="checkbox"/> Violation of Company Policy
<input type="checkbox"/> Personal or Domestic	<input type="checkbox"/> Lack of Work
<input type="checkbox"/> Continuing Education	<input type="checkbox"/> Gross Insubordination
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Items Returned to CCG (check all that apply)

☐ Cell Phone ☐ Computer/Laptop ☒ Company Truck/ Keys ☐ Building Keys ☐ CCG ID Cards ☐ Other _____

Explanation of Final Incident

Include all relevant dates and previous infractions. Continue on back of page if necessary.

MUST BE COMPLETED

Employee's Signature Alberto Carmona Date 10-6-06

Supervisor (signature) Will J. Groves Jr. Date 10-6-05

Supervisor (print name) William J Groves Jr.

Witness Signature _____ Date _____

Office Use Only

pd w/cu 10-13-05 km

If checked, the company chooses not to challenge claimant's eligibility to receive benefits.

Health Insurance NA Stock NA Tool amount owed _____

H.I. Reimbursement NA Garnishment _____ Vacation 3 1/2 days PC

401(k) NA Direct Deposit _____ Computer/Network Access see attached

ING NA Vehicle Allowance _____ Advances NA

Pre-Paid Legal NA Cell Phone NA

PC 10/5 Human Resources
10-10-05 Payroll KM

P. 05

RECEIVED FROM: 12152697568

60:51 50-01-00

1-800-822-3345

Communications Construction Group, LLC.

Record of Employment Separation

Employee's Name Brian Coleman Employee # 11563
 (print name)
 Last Day Worked 10-6-05 Job # 5008

Reason For Separation (check one)

Voluntary Resignation	Discharge
<input type="checkbox"/> Job Abandonment	<input type="checkbox"/> Absenteeism
<input type="checkbox"/> Job Relocation Refused	<input type="checkbox"/> Lateness
<input type="checkbox"/> Dissatisfied with Job	<input type="checkbox"/> Not Qualified
<input type="checkbox"/> Other Employment	<input type="checkbox"/> Violation of Company Policy
<input type="checkbox"/> Personal or Domestic	<input type="checkbox"/> Lack of Work
<input type="checkbox"/> Continuing Education	<input type="checkbox"/> Gross Insubordination
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Items Returned to CCG (check all that apply)

☒ Cell Phone ☐ Computer/Laptop ☒ Company Truck/ Keys ☐ Building Keys ☐ CCG ID Cards ☐ Other _____

Explanation of Final Incident

Include all relevant dates and previous infractions. Continue on back of page if necessary.

Employee's Signature Brian Coleman MUST BE COMPLETED Date 10-6-05
 Supervisor (signature) William J Grover Jr. Date 10-6-05
 Supervisor (print name) William J Grover Jr.
 Witness Signature _____ Date _____

Office Use Only

If checked, the company chooses not to challenge claimant's eligibility to receive benefits.
 Health Insurance term XL Stock NA Tool amount owed _____
 H.I. Reimbursement term XL Garnishment _____ Vacation 1/2 day XL
 401(k) NA Direct Deposit off Computer/Network Access see attached
 ING NA Vehicle Allowance _____ Advances NA
 Pre-Paid Legal NA Cell Phone returned

LC 10/5 ✓ Human Resources
10-13-05 Payroll KL

Medical KL
 Dental KL

CCG Emp separation frm(4-05)

Call Back # 302-241-1139

D0576

RECEIVED FROM: 12152697568

13:16 50-01-90

Communications Construction Group, LLC.

Record of Employment Separation

Employee's Name Joel Diaz Guaddarama Employee # 12036
 (print name)

Last Day Worked 10-6-05 Job # 5008

Reason For Separation (check one)

Voluntary Resignation	Discharge
<input type="checkbox"/> Job Abandonment	<input type="checkbox"/> Absenteeism
<input type="checkbox"/> Job Relocation Refused	<input type="checkbox"/> Lateness
<input type="checkbox"/> Dissatisfied with Job	<input type="checkbox"/> Not Qualified
<input type="checkbox"/> Other Employment	<input type="checkbox"/> Violation of Company Policy
<input type="checkbox"/> Personal or Domestic	<input type="checkbox"/> Lack of Work
<input type="checkbox"/> Continuing Education	<input type="checkbox"/> Gross Insubordination
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Items Returned to CCG (check all that apply)

☐ Cell Phone ☐ Computer/Laptop ☒ Company Truck/ Keys ☐ Building Keys ☐ CCG ID Cards ☐ Other _____

Explanation of Final Incident

Include all relevant dates and previous infractions. Continue on back of page if necessary.

MUST BE COMPLETED	
Employee's Signature <u>JOEL DIAZ GUADARAMA</u>	Date <u>10-6-05</u>
Supervisor (signature) <u>Will J. Groen Jr.</u>	Date <u>10-6-05</u>
Supervisor (print name) <u>William J Groen Jr.</u>	
Witness Signature _____	Date _____

Office Use Only

☐ If checked, the company chooses not to challenge claimant's eligibility to receive benefits.

Health Insurance NA Stock NA Tool amount owed _____

H.I. Reimbursement NA Garnishment _____ Vacation 2 days

401(K) NA Direct Deposit N/A Computer/Network Access See attached

ING NA Vehicle Allowance _____ Advances NA

Pre-Paid Legal NA Cell Phone _____

LC 10/5 Human Resources
10-7-05 Payroll #.w.

Communications Construction Group, LLC. **Record of Employment Separation**

Employee's Name Jason McLean Employee # 11951
 (print name)
 Last Day Worked 10-6-05 Job # 5008

Reason For Separation (check one)

<u>Voluntary Resignation</u>	<u>Discharge</u>
<input type="checkbox"/> Job Abandonment	<input type="checkbox"/> Absenteeism
<input type="checkbox"/> Job Relocation Refused	<input type="checkbox"/> Lateness
<input type="checkbox"/> Dissatisfied with Job	<input type="checkbox"/> Not Qualified
<input type="checkbox"/> Other Employment	<input type="checkbox"/> Violation of Company Policy
<input type="checkbox"/> Personal or Domestic	<input type="checkbox"/> Lack of Work
<input type="checkbox"/> Continuing Education	<input type="checkbox"/> Gross Insubordination
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Items Returned to CCG (check all that apply)

☒ Cell Phone ☐ Computer/Laptop ☒ Company Truck/ Keys ☐ Building Keys ☐ CCG ID Cards ☐ Other _____

Explanation of Final Incident

Include all relevant dates and previous infractions. Continue on back of page if necessary.

MUST BE COMPLETED

Employee's Signature Jason McLean Date 10-6-05
 Supervisor (signature) William J. Grouver Jr. Date 10-6-05
 Supervisor (print name) William J. Grouver Jr.
 Witness Signature [Signature] Date 10/6/05

Office Use Only

☐ If checked, the company chooses not to challenge claimant's eligibility to receive benefits.

Health Insurance term PC Stock NA Tool amount owed _____
 H.I. Reimbursement NA Garnishment _____ Vacation 2 days PC
 401(k) NA Direct Deposit off Computer/Network Access see attached
 ING NA Vehicle Allowance _____ Advances NA
 Pre-Paid Legal NA Cell Phone returned

10/9/05 Human Resources
10-7-05 Payroll km

medical km
Dental km
 CCG Emp separation innu(4-05)
vision km

D0578

call back # 3026785725

Communications Construction Group, LLC.
Record of Employment Separation

Employee's Name	<u>John Morris</u> (print name)	Employee #	<u>12001</u>
Last Day Worked	<u>10-6-05</u>	Job #	<u>5008</u>

Reason For Separation (check one)

<u>Voluntary Resignation</u>		<u>Discharge</u>	
<input type="checkbox"/>	Job Abandonment	<input type="checkbox"/>	Absenteeism
<input type="checkbox"/>	Job Relocation Refused	<input type="checkbox"/>	Lateness
<input type="checkbox"/>	Dissatisfied with Job	<input type="checkbox"/>	Not Qualified
<input type="checkbox"/>	Other Employment	<input type="checkbox"/>	Violation of Company Policy
<input type="checkbox"/>	Personal or Domestic	<input checked="" type="checkbox"/>	Lack of Work
<input type="checkbox"/>	Continuing Education	<input type="checkbox"/>	Gross Insubordination
<input type="checkbox"/>	Other _____	<input type="checkbox"/>	Other _____

Items Returned to CCG (check all that apply)

☒ Cell Phone ☐ Computer/Laptop ☐ Company Truck/ Keys ☐ Building Keys ☐ CCG ID Cards ☐ Other

Explanation of Final Incident

Include all relevant dates and previous infractions. Continue on back of page if necessary.

MUST BE COMPLETED

Employee's Signature [Signature] Date 10-6-05

Supervisor (signature) [Signature] Date 10-6-05

Supervisor (print name) William J Groves Jr

Witness Signature _____ Date _____

Office Use Only

☐ If checked, the company chooses not to challenge claimant's eligibility to receive benefits.

Health Insurance term PL Stock NA Tool amount owed

H.I. Reimbursement NA Garnishment Vacation 3 days PL

401(k) NA Direct Deposit off Computer/Network Access see attached

ING NA Vehicle Allowance Advances NA

Pre-Paid Legal NA Cell Phone returned

10/10/15

LC 10/5 / Human Resources
10/13/05 Payroll *dkm.*

D0580

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JASON MCLEAN and
BRIAN COLEMAN,

Plaintiffs,

v.

COMMUNICATIONS CONSTRUCTION
GROUP, LLC,

Defendant.

CIVIL ACTION NO. 06-617 (SLR)

ORDER

Now, this _____ day of _____, 2007, having considered Defendant Communication Construction Group, LLC's Motion for Summary Judgment and any opposition thereto, it is hereby **ORDERED** that the Motion is **GRANTED**. It is further **ORDERED** that Plaintiffs' Complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED BY THE COURT:

Robinson, U.S.D.J.

CERTIFICATE OF SERVICE

I, Daniel M. Silver, hereby certify that a true and correct copy of the foregoing Defendant Communications Construction Group, LLC's Motion for Summary Judgment, accompanying Memorandum of Law, and all Exhibits thereto has been served via CM/ECF this 28th day of November, 2007 upon the following:

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/s/ Daniel M. Silver

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